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does not authorize the officer to search a person not described in the affidavit who is casually on the premises. *Purkey v. Mabey* (Idaho), 193 Pac. 79 (1920). The constitutional right to be protected against an unlawful search and seizure extends even to a corporation. *Silverthorne Lumber Co. v. United States*, *supra*. It covers also the garage on the premises of the accused. *United States v. Slusser*, *supra*. A private dwelling does not lose its character as such, and become a distillery, because upon a search a still is found in operation upon the premises. *United States v. Kelih*, 272 Fed. 484 (1921). Since the making of the return of the warrant is merely a ministerial act, the failure of the officer to whom a search warrant is directed to make a return thereof cannot invalidate the search or seizure made under the warrant. *Rose v. United States*, 274 Fed. 245 (1921). Nor under the Volstead Act does it invalidate the warrant. *United States v. Kraus*, *supra*.

As to seizure without a warrant the National Prohibition Act provides that an officer is not justified in seizing intoxicating liquor or other property without a search warrant, except as provided in section 26 of that Act, which requires him to seize all intoxicating liquors being transported contrary to law. *United States v. Crossen*, 264 Fed. 459 (1920). On the grounds that an officer may avert a criminal act in the process of commission before him, it is held that an officer whose sense of smell informs him that the law is being violated may, without a warrant, enter a nearby house and arrest the persons found there conducting an illicit still and seize the apparatus so used. *United States v. Borkowski*, 268 Fed. 408 (1920). The correctness of this holding is to be doubted, and its dangerous tendency deprecated.

It is interesting to note in this connection that the so-called Stanley amendment to the National Prohibition Act, approved by the President on Nov. 23, 1921, provides that any federal prohibition agent who shall search any private dwelling without a search warrant, or who shall without a search warrant maliciously and without reasonable cause search any other building or property, shall be guilty of a misdemeanor and liable to a fine. And any person who shall impersonate a federal agent and shall arrest or detain any person, or in any manner search the person, building, or other property of any person, shall be guilty of a misdemeanor and liable to a fine or imprisonment, or both.

INSURANCE—OPTION TO ANOTHER TO PURCHASE REAL PROPERTY DOES NOT PASS TITLE TO SUCH PROPERTY SO AS TO AVOID INSURANCE POLICY THEREON.—Plaintiff, who was the owner of a certain residence, insured it with defendant company. Later, plaintiff made an executory contract for the sale of the property to a third person. Plaintiff claimed this contract was only an option, and the trial judge, sitting as chancellor, reformed and found the alleged contract to be an option only. The third person never exercised this option, but cancelled and returned the written contract to the plaintiff. Later the insured residence burned, and plaintiff sought to collect the insurance. Defendant refused payment on the ground that plaintiff had divested himself of all insurable interest in the property, and was not entitled to collect the insurance, under the

following provision of the policy, "* * * or in case any change shall take place in the title or interest or possession (except by succession by reason of the death of the assured) of the property herein named; or if the assured shall not be the sole or the unconditional owner in fee of said property, * * * then in each and every one of the above cases this policy shall be null and void". Plaintiff brings suit on the policy. *Held*, defendant liable. *Home Ins. Co. v. Chowning* (Ky.), 233 S. W. 731 (1921).

The policy in this case contains the clause now usually found in fire insurance policies, forbidding "any change in title, interest, or possession". These conditions against alienation or change of title or interest have uniformly been upheld as reasonable and valid. *Olney v. German Ins. Co.*, 88 Mich. 94, 50 N. W. 100, 26 Am. St. Rep. 281, 13 L. R. A. 684 (1891); *Smith v. Retail Merchants Fire Ins. Co.*, 29 S. D. 332, 137 N. W. 47, 42 L. R. A. (N. S.) 173 (1912). Since, however, the clause containing these conditions operates by way of forfeiture, it is to be strictly construed. *Hitchcock v. North Western Ins. Co.*, 26 N. Y. 68 (1862); *North Berwick Co. v. New England Fire & Marine Ins. Co.*, 52 Me. 336 (1864).

The general rule is that an executory contract for the sale of the insured premises, not consummated before loss, does not constitute a transfer, alienation, or change in title or interest. *Browning v. Home Ins. Co.*, 71 N. Y. 508, 27 Am. Rep. 86 (1877); *Home Mutual Ins. Co. v. Tomkies*, 30 Tex. Civ. App. 404, 71 S. W. 812 (1902); *Garner v. Milwaukee Mechanics' Ins. Co.*, 73 Kan. 127, 84 Pac. 717, 4 L. R. A. (N. S.) 654, 117 Am. St. Rep. 460 (1906). And this is true even though the instrument evidencing the contract is expressed as "a bond to stand for a deed". *Pringle v. Des Moines Ins. Co.*, 107 Iowa 742, 77 N. W. 521 (1898); *Phenix Ins. Co. v. Caldwell*, 187 Ill. 73, 58 N. E. 314 (1900). There are some jurisdictions, however, which hold an executory contract to be such a change in title or interest as to render the policy void. *Skinner, etc., Co. v. Houghton*, 92 Md. 68, 48 Atl. 85, 84 Am. St. Rep. 485 (1900); *Grunauer v. Westchester Fire Ins. Co.*, 72 N. J. Law 289, 62 Atl. 418, 3 L. R. A. (N. S.) 107 (1905). In the last case cited, a part of the purchase price had been paid.

In the instant case the contract was found to be a mere option to purchase, which had not been exercised at the time of the loss. Such an option does not constitute a change of interest so as to avoid the policy. *Mackintosh v. Agricultural Fire Ins. Co.*, 150 Cal. 440, 89 Pac. 102, 119 Am. St. Rep. 234 (1907); *House v. Security Fire Ins. Co.*, 145 Iowa 462, 121 N. W. 509 (1909); *Terminal Ice & Power Co. v. American Fire Ins. Co.*, 196 Mo. App. 241, 194 S. W. 722 (1917).

Virginia seems to follow the same doctrine as laid down in the instant case. *Rochester German Ins. Co. v. Monumental Savings Association*, 107 Va. 701, 60 S. E. 93 (1908).

MARRIAGE AND DIVORCE—PRESUMPTION OF VALIDITY WHERE FORMER HUSBAND HAS NOT BEEN ABSENT SEVEN YEARS.—In 1906, appellee married H., who shortly thereafter deserted her. In 1910, having been advised that